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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re ASHLEY T.,

a Person Coming Under the Juvenile Court Law.

B211214
(Los Angeles County
Super. Ct. No. CK73365)

LOS ANGELES COUNTY DEPARTMENT OF
CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

KIMBERLY N.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County, Marilyn H. Mackel, Commissioner. Affirmed.

Daniel G. Rooney, under appointment by the Court of Appeal, for Defendant and Appellant.

Raymond G. Fortner, Jr., County Counsel, James M. Owens, Assistant County Counsel, and Timothy M. O’Crowley, Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

Kimberly N. appeals from jurisdiction and disposition orders entered by the juvenile court by which the court found that her daughter, Ashley T., was a person described by Welfare and Institutions Code section 300, then terminated jurisdiction with a family law order granting sole legal and physical custody of Ashley T. to her father, David T.¹ Kimberly N. contends on appeal that the juvenile court intended to award Kimberly N. and David T. joint legal custody, based on a comment made by the court during the hearing of the matter, and that the final custody order failed to reflect the court's true intent. Alternatively, she contends that if the court intended to award David T. sole legal custody, the court abused its discretion. We disagree with both contentions and therefore affirm the disposition and jurisdiction orders, and the ensuing custody order.

FACTUAL AND PROCEDURAL BACKGROUND

The Los Angeles County Department of Children and Family Services (DCFS) received a referral in June 2008 alleging that Kimberly N. (Mother) and her male companion, Dean V., engaged in domestic violence and drug abuse that jeopardized the safety and welfare of the three children in their home. Ashley T. (born in March 1996) was permitted to remain in the custody of her biological father, David T. (Father). Ashley's seven-year-old half-brother, Devin N., and her

¹ All further undesignated statutory references are to the Welfare and Institutions Code. Also, we elect to refer to the parties by their first name and last initial. (See *In re Edward S.* (2009) 173 Cal.App.4th 387, 392, fn. 1.)

four-year-old half-sister, Brittany V., were taken into protective custody and later placed with a paternal aunt.²

Father told the social worker that a family law court in San Diego County had previously awarded him joint legal custody of Ashley with Mother, although Mother had been awarded primary physical custody of Ashley. Father said that previously Mother had been in a drug rehabilitation program, but he suspected Mother was using methamphetamines again because she had lost a significant amount of weight in a few months. Mother had given Father physical custody of Ashley a month earlier. Father said he intended to return to court to seek an order granting him sole legal and physical custody.

DCFS filed a section 300 petition alleging that Mother and Dean V. had a history of engaging in violent altercations in the presence of Ashley's half-brother and half-sister (§ 300, subds. (a) & (b)), and that Mother and Dean V. had a history of abusing drugs and were current users of illicit drugs that rendered them incapable of providing regular care for the three children, and endangered the children's physical and emotional health and safety (§ 300, subd. (b)).

DCFS stated in the detention report that Mother was arrested in mid-June 2008 for possession of a controlled substance, but she had been released. Both Mother and Dean V. had a history of multiple arrests for possession of controlled substances, among other offenses. Father was found to have no criminal history.

Ashley's half-brother and half-sister reported that they had seen Dean V. hit Mother. The half-brother also said that the parents sometimes used drugs and then slept all day, forgetting to feed the children.

² Dean V. is the biological father of Brittany V.; the identity of Devin N.'s biological father is unknown. None of these individuals are parties to this appeal.

The court found a prima facie case to detain Ashley and her half-siblings, and ordered them removed from Mother's and Dean V.'s custody. Ashley was ordered to be released to Father. Mother denied the allegations in the section 300 petition, and the matter was set for a jurisdiction and disposition hearing on July 21, 2008. DCFS was ordered to provide family reunification services to Mother, including referrals to domestic violence counseling for victims, parenting, individual counseling, and drug rehabilitation with random drug testing. Mother was granted monitored visits with Ashley. DCFS was ordered to provide family maintenance services to Father.

DCFS reported for the jurisdiction and disposition hearing that prior to the filing of the section 300 petition, Father had unsupervised weekend visits with Ashley three weekends per month. Mother had contacted him before DCFS intervened and said she was going to grant him full custody over Ashley as she intended to move to Montana. Father requested that DCFS recommend transferring the matter to family law court so he could seek primary physical and legal custody.

Unlike her half-siblings, Ashley denied that Mother and Dean V. ever struck each other, and denied any knowledge of Mother or Dean V. abusing drugs. The DCFS social worker reported she was unable to interview Mother because Mother had been incarcerated on July 16, 2008. Dean V. at first denied engaging in any incidents of domestic violence with Mother, but later said Mother had tried to hit him once when she had smoked "dope," causing his dog to attack Mother and injure her face. Dean V. said Mother had relapsed into abusing methamphetamines (he could not recall when), and admitted that he had also relapsed, about two months prior.

Father told the social worker that Ashley would not tell him anything about Mother's and Dean V.'s violent altercations or drug use. Someone else had told him that Dean V. had beaten Mother a few days before the children were detained.

The maternal grandmother reported that Mother had a long history of methamphetamine abuse. She had completed two residential drug treatment programs, but had relapsed. Mother was currently residing in a sober living facility, but the maternal grandmother was concerned about the fact Mother was being housed with Dean V. She believed Mother needed intensive drug treatment separate from Dean V. The maternal grandmother said Dean V. had broken things in her home and threatened to kill her and her family. Mother would not talk about whether Dean V. hit her, but the maternal grandmother suggested that some of Mother's neighbors could tell DCFS more.

A former neighbor reported that Dean V. was "a man out of control, a raging lion." Dean V. often threatened to kill people, including the maternal grandmother and the neighbor's girlfriend. The neighbor said Dean V. "would systematically beat [Mother]. She would come to our house bloodied from head to toe. We'd go outside and [Mother] would be lying on our porch, bloodied and beaten. [Mother] is terrified of [Dean V.]" The neighbor said that multiple people in the neighborhood had personally witnessed Dean V. beating Mother. The neighbor confirmed that both Mother and Dean V. abused methamphetamines. He heard Mother had been soliciting prostitution with the neighbors to earn money to buy drugs.

The program director at Mother's and Dean V.'s sober living facility said that both were under the influence of methamphetamines when they entered the program. When informed about their history of domestic violence, the program director said he intended to separate them. Dean V. became angry when told he

and Mother were to be separated, and said they would leave the program if that happened.

Ashley told the social worker she wanted to stay with Father. She said, “I really don’t want to go back with my mom, especially if [Dean V.] is there.” DCFS stated that the children could not safely be returned to Mother’s care. Mother remained in an abusive relationship with Dean V. and appeared incapable of protecting herself, much less the children. DCFS recommended that Ashley remain in Father’s care, and that the court terminate jurisdiction with a family law order granting Father primary legal and physical custody. Further, both half-siblings currently resided in Orange County, and DCFS recommended that the matter be transferred there for further services.

In an interim review report dated August 28, 2008, DCFS reported that Mother denied being physically abused by Dean V. Mother said the maternal grandmother was falsely reporting such abuse in order to separate her from Dean V. Mother admitted to using methamphetamines, and said she had enrolled in three drug treatment programs, beginning in 1999, none of which she completed. She had enrolled in a drug program in late July 2008, and was receiving counseling for drug abuse and domestic violence. She had also enrolled in individual counseling.

Ashley showed the social worker a letter Mother wrote to her, blaming Ashley for the family situation and for not being sensitive to Mother. However, Mother acted appropriately with Ashley during visits.

An interim review report dated September 29, 2008, stated that Mother’s drug tests had all been negative, except for one on September 25, 2008, which the drug program reported had been diluted. The drug counselor told the social worker

that a diluted test indicated the client had attempted to tamper with the specimen, and was considered a clinically positive test.

DCFS continued to recommend that Ashley remain in Father's care, and that the court terminate jurisdiction with a family law order granting Father primary legal and physical custody.

The parties engaged in mediation regarding the section 300 petition, and eventually Mother submitted on the petition, as amended. On September 29, 2008, the court heard the matter, and acknowledged Mother's waiver of her rights. The court found true the allegations of the section 300 petition, and that the children were persons described by subdivisions (a) and (b) of section 300.

During the jurisdiction and disposition hearing on September 29, 2008, Father's counsel argued that jurisdiction should be terminated and a family law order issued granting Father sole legal and physical custody, as recommended by DCFS. Counsel noted that just prior to DCFS intervention, Mother had indicated she was going to grant Father full custody over Ashley, as she intended to move to Montana. Counsel for Ashley joined with Father and DCFS.

As to Ashley, the court found that she was safe in Father's home and that court supervision was not necessary. The court ordered jurisdiction terminated, but stayed termination pending receipt of a family law order. The court noted that Mother objected to the termination of jurisdiction as to Ashley. The minute order issued on the date of the hearing did not specify whether the family law order was to grant Father joint or sole legal custody.

The court made the following comments about Ashley: "Regarding . . . Ashley, the court is going to follow the recommendation of [DCFS] for the following reasons: One, I'm taking as a whole the reports indicative of parents who have a lot of work to do and who can and should do that work, focusing on

[half-brother and half-sister]. Mother's focus as to Ashley, the 12-year-old child, should be to visit and visit appropriately, and, once she has complied with the case plan in this court, she can certainly file to have the family law order changed to give her – to go back to the original custody order or to have a renewed custody order, something different, but, at this time, it does not appear that the court should – given the facts and circumstances presented in this court, including the continued ongoing relationship between the Mother and [Dean V.], that the court should not follow the recommendations of [DCFS], in spite of the fact that Mother was custodial parent. She is going to receive the services. She will have visits with her child. They will be monitored. The case plan will be attached to the family law order, and, once she has complied with the case plan, she can go back into the family law court and seek a change of custody.”

However, the court later stated: “The court is going to terminate jurisdiction giving . . . Father, at this time, sole physical/*joint* legal custody of Ashley with Mother's visits monitored, two to three times a week by a monitor agreed upon by the parents, and the case plan attached to the recommendation.” (*Italics added.*) The court continued, “I want Mother to understand that by granting the family law order to Father does not negate your reunifying with Ashley. What is required here is your completion of the case plan. That will be attached to the family law order. And once you have completed it, you can go in the family law court, request a modification of the order that we're making here today.”

Thereafter, a final judgment/custody order was filed on October 8, 2008, stating that both legal and physical custody of Ashley were given to Father. The order was signed by the juvenile court on that date. The court's minute order of October 8, 2008, stated that the stay order on termination of jurisdiction issued on September 29, 2008 for Ashley was lifted, and a custody order filed granting sole

legal and physical custody to Father. Accordingly, the court terminated its jurisdiction as to Ashley.

This appeal followed.

DISCUSSION

I. The Court Intended to Award Father Sole Legal Custody

Mother argues on appeal, based on the court's statements at the hearing of September 29, 2008, that "what the court actually ordered was 'to terminate jurisdiction giving the . . . father . . . sole physical/*joint* legal custody of' Ashley." (Italics added.) She argues the written order that followed erroneously granted sole legal custody to Father. We disagree. We conclude, based on the totality of the comments made by the court at the hearing and the written order that followed, that the court intended to grant Father sole legal custody of Ashley, and simply misspoke when it said "joint" legal custody.

In its written reports addressing the recommended resolution of the matter with regard to Ashley, and in arguing the issue to the court, DCFS requested that the court award sole legal and physical custody of Ashley to Father. At the hearing, Father's counsel made the same request, and Ashley's counsel agreed. In announcing its ruling, the court said it "[wa]s going to follow the recommendation of [DCFS]." The court stated that it was doing so because Mother and Dean V. "ha[d] a lot of work to do," and they should focus on Ashley's half-brother and half-sister. The court said Mother's focus as to Ashley "should be to visit and visit appropriately," and if she complied with the case plan, she could seek to modify the custody order in family law court. The minute order issued on the date of the hearing did not specify whether the family law order was to be for joint or sole

legal custody. However, the custody order entered on October 8, 2008, specified that legal and physical custody of Ashley was awarded to Father.

Mother points out that when a conflict exists between a court's spoken words as stated in the reporter's transcript and the written record embodied in the court's order in the clerk's transcript, the conflict is "generally presumed to be clerical in nature and [is] resolved in favor of the reporter's transcript *unless the particular circumstances dictate otherwise.*' (*In re Merrick V.* (2004) 122 Cal.App.4th 235, 249.)" (Italics added.) Here, a conflict exists within the reporter's transcript. However, the court's comments, taken as a whole, indicate that the court intended to order sole legal custody in favor of Father, as recommended by DCFS and urged by Ashley's counsel. The court recognized that Mother previously had primary physical custody of Ashley, but the court made clear its belief that Mother's recent parenting was quite deficient, and she "ha[d] a lot of work to do" before she would be found adequate to resume parenting Ashley. The court's subsequent written order was consistent with the intent expressed during the hearing that, as recommended by DCFS, sole legal and physical custody would be awarded to Father.

II. The Custody Order Did Not Constitute an Abuse of Discretion

Mother argues in the alternative that if the juvenile court intended to award sole legal custody to Father, it was an abuse of discretion for it to do so. Mother contends that she had demonstrated she was capable of making parenting decisions regarding Ashley, because she was participating actively in a drug rehabilitation program, drug testing clean, engaging in counseling, and visiting regularly and appropriately. She argues "[t]here were no vivid markers here illuminating

[M]other's inability to participate rationally and maturely in making major decisions [a]ffecting minor's life." We disagree.

Although she had been participating in counseling for a few months, Mother continued to flatly deny being physically abused by Dean V., despite overwhelming evidence to the contrary. As noted by the trial court when making the custody order, Mother's intimate relationship with Dean V. continued unabated. She had participated in a drug rehabilitation program for a few months, whereas she had tried and failed to complete a drug rehabilitation program three times since 1999. Her methamphetamine abuse was relatively severe and had been interfering a great deal with her ability to parent her children. She had a positive drug test only days before the hearing. Although Mother's visits with Ashley were appropriate, she had written Ashley a letter blaming the child for the family's problems and accusing her of being insensitive to Mother. Mother's behavior amply demonstrated that her ability to exercise rational, appropriate parental judgment was severely impaired, and the trial court did not abuse its discretion when it awarded sole legal and physical custody of Ashley to Father.

DISPOSITION

The jurisdiction and disposition orders, and the order granting sole legal and physical custody of Ashley to Father, are affirmed.

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WILLHITE, Acting P. J.

We concur:

MANELLA, J.

SUZUKAWA, J.